IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1680 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHAVLAL NARANDAS RATHOD

Versus

BHIKHALAL RAMSUKHBHAI THAKKAR

Appearance:

1. Special Civil Application No. 1680 of 1991

MR SL VAISHYA for Petitioner No. 1

MR MB FAROOQUI for Respondent No. 1

SERVED BY RPAD - (R) for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/10/2002

ORAL JUDGEMENT

#. The petitioner is a resident of Nava Deesa town. The petitioner is staying with his family members in a house, which is built on the land bearing Survey No.1009. It is the say of the petitioner that the petitioner's ancestor one Prabhuji Ramji was granted lease of the said land in the year 1913 at the rate of Rs.2/- as annual rent by the then Captain of Cantonment of Deesa. As per the averments in the petition, the father of the petitioner and his brother were residing in the house built on Survey Nos.1009, 1010 and 1011 (Old Survey Nos.51, 52 and 53). There is also an open vada land attached to Survey No.1009. The said area is in possession of the petitioner, and, prior to that, his ancestors were occupying the said land since 1913. The document of lease is produced at page 25, which is dated 5.4.1913. In that view of the matter, it is clear that, the area in question is in occupation of the petitioner and his ancestors since last more than 80 years. The petitioner has also annexed the document showing that, he is occupying the area in question. Rs.12, 03 Ana and 9 Pai were paid by one Lawar Prabhuji Ramaji, who was the grandfather of the present petitioner. The receipt is also given, which is dated 15.3.1947, and which is at page 37 Annexure-D.

#. It seems that an inquiry under Section 37 of the Bombay Land Revenue Code was carried out by the Inquiry Officer, Office of the City Survey Officer, New Deesa. The Inquiry Officer, by his order dated 11.6.1964, found that, the area in question was in possession of the grandfather of the petitioner and one Naranji Prabhuji (father of the present petitioner) and Jasaji Prabhuji and Ranchhodji Prabhuji, i.e. uncles of the present petitioner. During the inquiry, it was found that excess area was not granted to the petitioner and that the petitioner is in unauthorised possession of the same. The said order is produced by the petitioner at Annexure-B. However, it is not in dispute that the petitioner was in physical possession, and, prior to him, his ancestors were in possession of the disputed land since 1913. The petitioner has also annexed the application given by the ancestor of the petitioner at page 35, which is dated 15.3.1947, by which, it is requested to grant the said land by charging requisite charge for the same, and, according to the petitioner, the payment was made to the tune of Rs.12, 03 Ana and 9 Pai.

#. On behalf of the petitioner, an application was submitted to the Deesa Nagarpalika for granting the land in question to the petitioner, being land of Survey No.28

paiki 23 - 69 sq.mtrs. Deesa Nagarpalika passed a resolution on 7.6.1988, regularising the possession of the petitioner by charging Rs.16583/-. As submitted by the petitioner, the petitioner has already deposited the said amount and, receipt to that effect is also annexed at Annexure-K in the compilation. The City Survey Superintendent, Deesa as well as the Deputy Collector, Palanpur also recommended for such regularisation. On that basis, the Collector passed the order on 6.6.1989, which is at Annexure-I, by which the possession of the petitioner is ordered to be regularised. The Collector, in his order, found that, regularisation of such encroachment will not result in any awkward projection. Accordingly, the land in question was ordered to be regularised by granting the said land as new and restricted tenure. The said order of the Collector was challenged by respondent No.1 herein. The Additional Chief Secretary, Revenue Department, by his order dated 7.2.1991, allowed revision application filed by respondent No.1 and set aside the order of the Collector. The said order is challenged by the present petitioner by way of this special civil application.

#. This Court has admitted this special civil application in the year 1991 and interim relief was also granted to the petitioner at the time of admitting the matter.

#. Narration of the aforesaid facts shows that the land in question is in possession of the petitioner, and, prior to him, the same was in possession of the ancestor of the petitioner since 1913, and, since considerable time, family members of the petitioner are occupying the suit premises, which is a residential premises, and the area abutting to the residential premises. Considering the documentary evidence on record, it is clear that the petitioner is in settled possession since more than eight decades. The Collector, after considering the proposal of the Municipality as well as considering the reports of the City Survey Officer and the Deputy Collector, passed the order in favour of the petitioner, regularising the so-called encroachment by imposing appropriate conditions. Before the Secretary, respondent No.1 was not even present. It is submitted that, so many residential houses are situated in the said area and that, Deesa Nagarpalika put up advertisement dated 17.9.1976 closing the road, which was passing through the said area. Since it is clear that the Deesa Nagarpalika itself decided to allot the land in question to the petitioner and even there were reports of the City Survey Officer and the Deputy Collector in this behalf, and,

after considering the facts and circumstances of the case, the Collector has passed the aforesaid order, in my view, the Secretary should not have allowed revision application of the respondent No.1. It is required to be noted that the State Government has not opposed this petition. Mr.Dagli, learned Assistant Government Pleader, who is present in the Court, has fairly stated that the office of the Government Pleader has not received any papers in connection with the present petition. This petition is pending before this court since 1991 and the State Government has thought it fit not to contest this petition. At the time of hearing of this petition, even, none has remained present on behalf of respondent No.1.

#. Considering the documentary evidence, which I have already referred to earlier, and considering the fact that the petitioner is in settled possession of the disputed land since more than 80 years, the Secretary should not have interfered with the order of the Collector at the instance of respondent No.1 while exercising the revisional powers. There is nothing on record to suggest that the area in question is part of a street. Even otherwise, since the petitioner is in possession since more than 80 years, this is not a case, in which, after so many years, the petitioner can be thrown out from his residential premises. The petitioner has already paid occupancy price of Rs. 16583/- as per the order of the Collector, which was fixed by the Municipality.

#. Considering the aforesaid aspect of the matter, and, considering the fact that this petition is not opposed by any of the respondents, and, considering the fact that the averments made in this petition are not controverted, in my view, this petition deserves to be allowed and is accordingly allowed. The order of the Secretary dated 7.2.1991, which is at Annexure-N, is quashed and set aside and the order of the Collector dated 6.6.1989 at Annexure-I is restored. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)